IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 41 of 2004
with
Miscellaneous Civil Application No.2050 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAVINCHANDRA NATHALAL DOSHI

Versus

JAGDISHBHAI SHANKERLAL MODI

Appearance: Mr.S.M. Shah, with MR SUREN M SHAH,
for the Petitioner.
MR SUNIT S SHAH for Respondent No.1.
..... for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/04/2004

ORAL JUDGEMENT

This is a revision application filed by the original defendant of HRP Suit No.2658 of 1991. The respondents herein are the original plaintiffs of the aforesaid suit.

The petitioner-tenant was given on rent the

premises, which is a bungalow, situated in Navrangpura area in the City of Ahmedabad, known as "Chandramouli Bungalow". The said premises is consisting of four blocks, out of which the defendant was given on rent one block, situated on the first floor, on western side, which is bearing Survey No.377/3/4. The plaintiff instituted the said suit for getting a decree for possession as provided by the Rent Act on the ground that the defendant is in arrears of rent as well as on the ground that after taking the rented premises, subsequently, the tenant has acquired suitable alternative accommodation and that, on that ground, he is required to be evicted from the suit premises.

The defendant denied the said suit by filing Written Statement, Exhibit 15. He denied the claim of the plaintiff for getting a decree for possession on the ground of arrears of rent as well as on the ground of acquisition of suitable alternative accommodation. It is the say of the tenant in the written statement that he has not purchased or acquired any alternative premises, as suggested by the plaintiff in the plaint, either in his name or in the name of his wife or in the name of his son, and in the written statement, it is stated that he is residing in the suit premises, along with his wife and son.

The trial court, thereafter, framed various issues at Exhibit 17. Issue No.2, which is framed by the trial court, is in connection with the acquisition of suitable and sufficient residence by the defendant-tenant. Both the sides led appropriate evidence on all the issues framed by the trial court. The trial court, after considering the evidence on record and after hearing both the sides, came to the conclusion that the plaintiff has proved his case regarding acquisition of alternative accommodation by the tenant. On the aforesaid ground, the trial court decreed the suit of the plaintiff for possession. The trial court also passed a decree to pay Rs.15,833.13 Ps. by way of permitted increases.

Being aggrieved by the said judgment, the defendant carried the matter further by way of appeal before the Appellate Bench of the Small Causes Court, being Civil Appeal No.6 of 2001. The Appellate Bench, after considering the arguments of both the sides, confirmed the decree of the trial court on the ground of acquisition of alternative accommodation. However, the decree of the trial court regarding payment of Rs.15,883.13 Ps. is modified by the appellate court,

and, instead, the said amount was reduced to Rs.12,339/-. So far as the decree for possession is concerned, the same is accordingly confirmed by the appellate court. The tenant, being aggrieved by the said decree, has approached this Court by way of this revision application, which is filed under Section 29(2) of the Bombay Rent Act.

At the time of hearing of this revision application, this court has also called for the record and proceedings from the trial court and that is how, the entire evidence, both documentary and oral, is available for my perusal in this revision application.

Mr.S.M. Shah, learned Advocate for the petitioner-tenant, vehemently submitted that so far as the finding recorded by both the courts below in connection with Section 13(1)(l) of the Bombay Rent Act is concerned, the said finding of fact is not correct, as, the premises is situated in Kruti Apartments, which consists of two flats, and the said flats are in the names of his wife Nalini and his son Sudip. Mr.Shah further submitted that the tenant cannot assert any right in any manner if the premises is purchased by his son and wife. It is also submitted by Mr.Shah that the tenant cannot go and occupy the said premises, as, he has no right, title or interest over the said property. It is submitted by Mr.Shah that both the Courts below have not examined this point properly. It is also submitted by Mr.Shah that, even assuming that some consideration is paid by the defendant at the time of purchasing the aforesaid flats, that, ipso facto, is not enough to attract the provisions of Section 13(1)(l) of the Bombay Rent Act, for coming to the conclusion that the tenant has acquired suitable alternative accommodation.

It is not in dispute that at the time of passing the decree, the so-called alternative accommodation was already available. This observation is required to be made because Mr.S.M. Shah, for the petitioner, incidentally argued that at the time when the suit was filed, the alternative accommodation was not available, though, of course, this aspect is disputed by Mr.Sunit Shah. Even if the premises is acquired subsequently, during the pendency of the suit, such subsequent event can always be taken into consideration. If such alternative accommodation is available, the Court can certainly pass decree considering the said aspect of the matter. Further, the fact remains that even as per the evidence of the original defendant, the flats were booked somewhere in the year 1982 and construction was completed

in 1993.

It is submitted by Mr.Shah that the appellate court has not raised points for determination at the time of deciding the appeal and, therefore, the matter is required to be remanded to the appellate Bench for formulating appropriate points for determination. Mr.Shah also submitted that the trial court has also not raised any issue whether the defendant can assert any right or whether he can go and occupy the so-called acquired premises as a matter of right. He submitted that even if his son or wife may allow him to occupy the said premises for some time, it cannot be said that the tenant can go and occupy the said premises as a matter of right. In his submission, such acquisition, therefore, cannot be said to be a suitable alternative accommodation.

Mr. Sunit S. Shah, learned Advocate appearing for the respondents, submitted that, after appreciating the evidence on record, both the Courts below have concurrently found that the flats in question are, as such, purchased by the defendant from his own income, as it is in evidence that his wife was doing only household work and she was not having any independent income, by which she could have purchased the flats in question. He submitted that the flats in question are, in substance, constructed and purchased by the defendant from his own income and, merely in order to deprive the landlord from taking benefits of the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Bombay Rent Act", for short), a show is made by the defendant as if the same is constructed by his wife and son. He submitted that the tenant has tried to misuse the provisions of the Bombay Rent Act, with the sole object to deprive the landlord to get the decree for possession on the aforesaid ground. He, therefore, submitted that the concurrent finding of fact recorded by both the courts below is not required to be disturbed in this revision application, especially when it cannot be said that the courts below have committed any error of law in appreciating such evidence or that the courts below misread the evidence on record. Regarding non-framing of points for determination is concerned, Mr. Sunit S. Shah, learned Advocate for the respondent, submitted that whatever points, which were argued by the learned Advocate for the petitioner before the appellate Bench, have been considered by the appellate Bench and no prejudice is caused to the petitioner-tenant in any manner by non-framing of such points for determination. Mr.Sunit S. Shah has also submitted that the decree for

possession is already executed by the landlord and, according to him, the possession of the suit premises is already handed over to the respondent-plaintiff.

Both the sides have relied upon certain judgments in connection with the effect of non-framing of points for determination by the appellate court.

I have heard the learned Advocates for both the sides, in detail. I have also gone through the oral and documentary evidence produced by the parties before the trial court. I have also gone through the record and proceedings.

In my view, there is no substance in this revision application. So far as acquisition of alternative accommodation is concerned, it has come in evidence of the defendant himself that for the purpose of his business, he requires telephone connection and in the rented premises, the telephone connection was already disconnected about five years back. His explanation is that the Company which had provided telephone connection, got the same disconnected. It has come in evidence that, in the so-called rented premises, which is known as "Kruti Apartments" (there are two flats in question), there are already two telephone connections, one in the name of the wife of the present petitioner-defendant and the other in the name of the son of the defendant. The tenant has stated in his evidence that in the rented premises, he as well as his sons are residing together. Even that stand is taken in the written statement. The tenant has also stated in his evidence that for his business, he requires telephone connection. The defendant has not stated anything as to in which manner his wife was able to purchase the flat in question. As against that, the defendant, as per his evidence, is doing civil construction work and, accordingly, he is in the building construction activity. The aforesaid aspect of the evidence is appreciated by both the courts below and they have, ultimately, reached the conclusion that the plaintiff has proved his case for getting possession on the ground of acquisition of suitable alternative accommodation on the part of the tenant. It is required to be noted that so far as aforesaid two flats situated in Kruti Apartments are concerned, there is no partition wall and measurement of both the flats have also been given by the tenant in his evidence, which is sufficient to accommodate all the family members. Apart from the aforesaid aspect of the matter, it is required to be noted that the tenant has not even examined any independent witness in order to substantiate his say that

the sale consideration was paid independently by his wife and his son.

Mr.Shah, learned Advocate for the petitioner, at this stage, however, relied upon the decision of the Full Bench of this Court in Heirs of Jayantilal Kanjibhai v. Rameshchandra Uttamram, 2000(3) G.L.H. 76. In the aforesaid case, there was an evidence on record that the wife of the tenant was having independent income, as, she was serving and from her own income, she had purchased another premises, which she had transferred by way of letting out the same, and on the date of filing the suit, such accommodation acquired by the wife was also not found available. The Full Bench of this Court in the aforesaid judgment, therefore, found that the acquisition of a premises by the wife, from her own income, cannot be said to be an acquisition by the tenant himself and on the basis of the same, the claim of the plaintiff in the said decision was negatived by the Full Bench. So far as the present case is concerned, there is evidence on record that the wife of the tenant was not having any independent income worth the name. The flats in question were purchased in the name of the wife and son. In the rented premises, the telephone connection was admittedly disconnected and even in the new premises, the telephone connection was taken, may be, in the name of the wife of the tenant. Mr. Sunit S. Shah, learned Advocate for respondent No.1, has also invited my attention to the documentary evidence in the form of electricity bill of the rented premises, which shows that there was hardly any electricity consumption in the rented premises for a certain period. On the basis of the said documentary evidence, it is submitted by Mr.Sunit S. Shah, for respondent No.1, that the tenant has also shifted his residence to the aforesaid premises, i.e. "Kruti Apartments".

It is also required to be noted that, during the pendency of the suit, the wife of the tenant died, in the year 1997. At that time, some religious ceremony, viz. Besna Ceremony, was organised by the defendant and for that purpose, there is also an advertisement in the newspaper, which is part of the record. As per the same, the defendant has given his address as "Kruti Apartments" (so-called newly acquired premises) and as per the contents of that advertisement, it is stated that the said Besna Ceremony is held at his residence in Kruti Apartments. Mr.S.M. Shah, learned Advocate for the petitioner, however, submitted that simply because the tenant has given such intimation by way of newspaper report, by which it is mentioned that the Besna Ceremony

will be performed at Kruti Apartments, that, ipso facto, is not enough for coming to the conclusion that the tenant has shifted his home. That may be true, but this has to be appreciated with other documentary and oral evidence on record. If the totality of the evidence is taken into consideration, in my view, both the courts below are absolutely justified in coming to the conclusion that the tenant has acquired alternative accommodation.

In this connection, relevant observations from the order of the appellate Bench are also required to be considered. In paragraph 21, the appellate Bench has observed as under :-

" ... ...

21. In para 12 of his deposition the defendant has admitted that there is one flat in Kruti Apartment in the name of his son and another flat in the name of his wife. Now this admission clearly shows that this defendant did not hesitate to tell a lie in the form of denial in the written statement. He further deposed that Flat No.B-4, is of his son Sudip and flat No.B-3 is of his wife Naliniben. He further deposed that flat No.B-3 and B-4 are continuous flats without any partition in between. No.B-3 consists of, according to the defendant, one bed-room, one dining, one kitchen, one store-room and balcony and B-4 consists of one bed-room, one small drawing room, one Pooja room, two balcony. He admits that those flats were booked somewhere in 1982 and construction was completed somewhere in 1993. He admits that each flat is admeasuring 100 sq. yds. and accordingly total constructed area of two flats is 200 sq. yds. He further admits that it is true that each flat is equal in size to the suit premises. In other words, it is admitted that said acquired premise is double in size comparing to suit premises. He further says that at this date of his deposition in his bungalow there are four members and they are defendant himself, his son, daughter in law and one grand son. The defendant persists that he has not shifted his residence in Kruti Apartment and says that his son and his family went to reside in Kruti Apartment somewhere in 1994-95. But he admits that his wife expired somewhere in August, 1997 and after death ceremony was done at Kruti Apartment and he admits the press-note at

Exh.113. He also admits that his wife expired at Kruti Apartment. There is no telephone in the suit premises, whereas there are two telephones in Kruti Apartment, one in the name of his son and another in the name of defendant's wife. The telephone connection in his son's name was taken only about two years before the date of his deposition. He admits that he also needs telephone for his business but he has not taken any telephone connection in the suit premises. He admits that though his son has shifted his residence in Kruti Apartment, his name continues in the ration card in the suit premises. He also admits that even in new forms for obtaining the fresh ration card four names have been mentioned and the address given is of the suit premises. Though admittedly the defendant's son and his family is residing in Kruti Apartment.

... ..."

Considering the aforesaid aspect of the matter, there is absolutely no substance in the argument of Mr.S.M. Shah, for the petitioner, that the Decree under Section 13(1)(l) of the Rent Act could not have been passed in the present case. I, therefore, do not find any substance in the aforesaid argument of Mr.S.M. Shah in this behalf.

So far as the question about non-framing of points for determination is concerned, it is, no doubt, true that the appellate Bench has not specifically framed the points for determination. Mr.S.M. Shah in this behalf has relied upon the unreported judgment of this Court (Coram : R.M. Doshit, J.) rendered in Civil Revision Application No.1287 of 1983 on 18.9.2002. In the said decision, the trial court passed a decree for possession. The appeal against the trial court's order was allowed by the District Judge. While allowing the revision and remanding the matter to the appellate court, this Court observed that the appellate court erred in not setting out the points for determination, as envisaged under Order 41 Rule 31 of the Code of Civil Procedure.

Mr.Shah has also further submitted that the subordinate courts should write judgments as required under Circular, and to substantiate his say on this point, he has also relied upon the judgment of this Court in Ismail Haji Mohammed Abrahani and anther (Members of Hanali Muslims) v. The State of Bombay (Now Gujarat), VII GLR 208.

He has also relied upon the decision of the Bombay High Court in Mhasu Bhauji v. Davalat Narayan, VII BLR 174 to bring home the point that the appellate court has to raise points for determination to clear up the pleadings and focus the attention of the Court and of the parties on the specific and rival contentions of the latter.

Mr.Sunit S. Shah, learned Advocate for respondent No.1, has submitted that if the attention of the parties is focussed on a particular issue and even if on that point, specific issue is not framed, it would not vitiate the judgment of the Court. In order to substantiate his say on this aspect, he has relied upon the decision of the Apex Court in Kunju Kesavan v M.M. Philip, ICS, and others, AIR 1964 SC 164. It has been held by the Apex Court that if both the parties have understood the nature of the issue in the case, absence of such issue will not vitiate the decision. The Honourable Supreme Court, therefore, held that, when the parties went to trial, fully understanding the central fact, the absence of an issue, therefore, did not lead to a mistrial sufficient to vitiate the decision.

So far as the points for determination is concerned, it is required to be noted that the petitioner-tenant has argued his entire case on the point of acquisition of so-called alternative accommodation and both the Courts below have considered the question about such acquisition. The Court has also considered whether it is really the tenant who has acquired the premises in the names of his son and wife or they are independent premises belonging to his wife and son. Simply because the appellate Bench has not framed the points for determination, in my view, that itself cannot vitiate the judgment of the appellate Bench on the aforesaid point.

Mr.Sunit S. Shah has also relied upon the decision of a learned single Judge of this Court in Bhil Kanji Bhagwan v. Bhil Karsan Bijal, 2003 (3) GLR 2080, wherein, after considering the various judgments of the Apex Court, the learned single Judge of this Court has held that if the parties' attention is focussed and if the parties were aware about the point involved in the matter, the order of the appellate court cannot be said to be vitiated simply because the points for determination are not framed. In the said judgment, the single Judge has also considered the judgment in Mhasu Bhauji v. Davalat Narayan, VII BLR 174 (supra). In the instant case, the petitioner has argued his case fully before the appellate Bench and the appellate court has

dealt with all the points in the impugned judgment. Simply because the points for determination are not framed by the appellate Bench, it will not prejudice the case of the petitioner in any manner. Further, it is required to be noted that the trial court has framed necessary issues and the parties have led evidence. Further, it is also required to be noted that, usually, the appellate court, after conclusion of the arguments, at the time of writing the judgment, frames such points for determination, while issues in the suit are framed at the earlier stage before the suit is taken up for hearing. Under the circumstances, I do not find any substance in the said contention of Mr.Shah for the petitioner.

Mr.S.M. Shah further argued that even though it is true that the decree for possession is already executed and the defendant has already handed over possession of the suit premises to the plaintiff, that itself may not be treated as a ground for non-suiting the petitioner. It is true that even though the decree for possession is executed, if this revision application is allowed, ultimately, the petitioner can take recourse to Section 144 of the Code of Civil Procedure. However, in the instant case, considering the evidence on record as well as considering the reasoning of the courts below, in my view, no interference of this Court is called for in a revision filed under Section 29(2) of the Bombay Rent Act.

This Court, however, would like to place on record that the appellate bench of the Small Causes Court, Ahmedabad, in most of the cases, is not framing points for determination. When the Appellate Bench is deciding an appeal under the Rent Act, it is necessary that, in view of Order 41 Rule 31 of the Code of Civil Procedure, it should frame the points for determination, which should clearly be reflected in the judgment. It is a requirement of the Code of Civil Procedure, which is required to be followed by the Court at the time of deciding the appeal. All the Courts, including the appellate Bench of the Small Causes Court, are required to frame appropriate points for determination at the time of deciding such appeal. When the appellate court is deciding an appeal under the Bombay Rent Act, it is necessary to comply with the provisions of Order 41 Rule 31 of the Code of Civil Procedure, which also require that the points for determination is framed by the Court. The Appellate Court, therefore, should take appropriate care in all such cases to frame appropriate points for determination. In fact, it is the duty of the appellate

court to see that such points for determination are framed. I am sure that the appellate Bench of the Small Causes Court, Ahmedabad, as well as all appellate courts will take appropriate care at the time of deciding appeals and will frame points for determination while disposing of appeals, which come before them for consideration.

However, so far as the present case is concerned, in view of what I have stated earlier, no interference of this Court with the impugned decision of the appellate bench of the Small Causes Court is called for in this revision application. The revision is, therefore, rejected at the admission stage.

In view of the above order passed in the CRA, Mr.S.M. Shah for the petitioner seeks permission to withdraw MCA No.2050 of 2003. Permission is granted. MCA No.2050 of 2003 stands disposed of accordingly.

R & P to be sent to the trial court forthwith.

A copy of this judgment to be sent to the Chief Judge, Small Causes Court, Ahmedabad, for information.

16th April, 2004 (P.B. Majmudar, J.)

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(apj)